FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC RECORDS

FROM: COMMISSION SECRETARY D.H.

DATE: July 9, 2003

SUBJECT: COMMENT: PROPOSED AO 2003-12

Transmitted herewith is a timely submitted comment from Lawrence Noble, Executive Director, Center for Responsive Politics and Paul Sanford, Director, FEC Watch.

Proposed Advisory Opinion 2003-12 is on the agenda for Thursday, July 10, 2003.

Attachment:

2 pages

July 9, 2003

VIA E-MAIL

Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: AOR 2003-12 Stop Taxpayer Money for Politicians Committee & Rep. Jeff Flake.

Dear Mr. Norton:

We are writing on behalf of the Center for Responsive Politics and its campaign finance law project FEC Watch to comment on the alternative drafts of AO 2003-12, an advisory opinion request submitted by Stop Taxpayer Money for Politicians Committee ("the Committee") and Representative Jeff Flake. The facts of the request are recounted at length in the draft, and summarized in our previous comments, so we will move directly to the substance of our comments.

Procedural Issues

As an initial matter, we want to comment on the near absence of any meaningful opportunity to comment on the draft opinions. Two drafts, together comprising more than 60 pages, were made public at approximately 12:00 noon today, with a statement that comments were due by close of business today. Given the length of the drafts and the complexity and importance of the issues, a five-hour comment period is unreasonable. The request raises a number of important issues under the new Bipartisan Campaign Reform Act of 2002, some of which the FEC is dealing with for the first time. The Commission's conclusions in this AO will have significant implications for the future development of the law.

Under normal circumstances—where the drafts were submitted for Commission consideration and made public within the time period specified in the Commission's own procedures—interested parties are often given three or more days to submit comments on drafts. While the FEC was not required to give interested parties an opportunity to comment on draft advisory opinions, once it decided to do so as a policy matter it took on the responsibility to ensure that its actions do not make that comment period illusory. Publicly releasing two drafts comprising together over 60 pages and calling for comments to be filed within 5 hours reduces the comment period to a meaningless formality. Therefore, given the shortness of time, our comments are by necessity extremely limited.

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The Alternative Drafts

Generally, we agree with the conclusions reached in Draft A, though we disagree with the rationale. Draft A concludes that STMP is affiliated with Representative Flake's principal campaign committee (PCC). However, it then engages in a detailed analysis of the purposes and activities of STMP for purposes of applying 2 U.S.C. § 441i(e).

In our view, this approach ignores the most basic consequences of affiliation between the two entities. Because STMP is affiliated with the (PCC) of a federal candidate, the two entities are "considered to be one political committee for purposes of the Act's contribution limits." Draft A at 14. As such, the two entities share a single contribution limit. In addition, STMP is also subject to the contribution prohibitions in section 441b. Therefore, it may not raise or even possess nonfederal funds, and under 11 CFR 104.12, must disgorge those funds upon affiliation with the PCC.

Viewed in this light, a detailed analysis of the activities of STMP, the purposes of Representative Flake's solicitations, *etc.*, is unnecessary. STMP's affiliation with the PCC precludes its receipt and use of soft money.

Draft B suffers from a number of analytical problems and represents a very narrow reading of BCRA, most of which we have insufficient time to address. The result of passing draft B, however, will be the opening of new loopholes through which Federal candidates and officeholders will be able to raise large soft money contributions for committees they establish and control—committees which, by the draft's own admission, must be considered affiliated with the candidates principle campaign committee under the law. BCRA specifically prohibits candidates and officeholders from raising money for such a committee that is outside the Federal limits and prohibitions. In fact, even though the draft attempts to avoid the clear application of the affiliation rules by analogizing these committees to leadership PACs, the draft sharply departs from its own construct when it declares that this committee can raise soft money. This is particularly true given that the FEC has stated on numerous occasions recently that leadership PACs may not raise soft money. Thus, this analysis conveniently adopts the benefits of affiliation, without accepting the associated burdens.

Respectfully submitted,

Lawrence Noble
Executive Director
Center for Responsive Politics

Paul Sanford
Director
FEC Watch